UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CONSORZIO DEL PROSCIUTTO
DI SAN DANIELE
v. **C.A. No.: 07-039ML**
DANIELE, INC.

DEFENDANT, DANIELE, INC.'S, PRE-TRIAL STATEMENT
IN RELATION TO ITS COUNTERCLAIM

I. Preamble

1. Plaintiff, Consorzio del Prosciutto di San Daniele, filed its complaint alleging a breach of the Settlement Agreement between the parties dated March 25, 2005, a copy of which is attached hereto for reference. The Settlement Agreement was pursuant to the Plaintiff's action against this Defendant in case number 03-512ML filed within this District Court.

II. Various Positions of the Plaintiff, with which Defendant, Daniele International, Inc., disagrees are as follows:

1. Most of the Plaintiff's complaint re-litigates the issues that have already been merged into a Settlement Agreement.
2. That Daniele, Inc. has failed to adopt one trademark.
3. That Defendant's packages and labels are in violation of the Settlement Agreement.
4. That Defendant is not indicating that its prosciutto is made in the United States.
5. That Daniele uses the Daniele trademark on its labels.
6. That Daniele has not endeavored to avoid confusion with the Plaintiff or San Daniele.

III. Daniele's Position to the Plaintiff's Complaint

1. The Settlement Agreement replaces and supersedes the prior agreement of August 6, 2003. Therefore, any allegation concerning the August 6, 2003 agreement or the lawsuit are irrelevant in view of the March 25, 2005 settlement agreement.
2. The 2005 settlement agreement specifically states that the parties are resolving their differences in relation to the trademarks and trade names, respective marks, etc. and giving full respect to the rights and privileges to the other to prevent confusion. (See, Preamble to Settlement Agreement).

3. Paragraph 2 of the Settlement Agreement allows Daniele to adopt the fictitious name, Daniele, Inc., and states that Daniele may use in its logo Daniele, Inc. or any other corporate name or fictitious name and not use a word such as International or Prosciutto in its name that may cause confusion with "San Daniele".
4. Paragraph 5 states that Daniele shall cease in its use of the Daniele word and logo trademarks in connection with the sale of prosciutto and ham and shall use a different trademark bearing no resemblance to San Daniele. (Note. The phrase says "a different" and not "one or only one or a single.")
5. Paragraph 6 states the size of the label requirements and "subject to this requirement as an example Daniele may use the logo shown in Exhibit A to this agreement."
6. Paragraph 10 specifically says "The parties shall endeavor to avoid confusion between their trademarks and trade names."

In conclusion, based on the explicit terms of the agreement, Daniele is not required to have one different trademark. In addition, there are many plurals to the word "trademarks" in the Settlement Agreement as noted above.

Exhibit A is an example as to Paragraph 6 concerning the size of letters. It does state unequivocally that Daniele may use the logo shown in Exhibit A to this agreement. In Exhibit A the different trademark is "Presidential" which is an example.

Daniele has filed a Counterclaim seeking a declaration by this Court that:

a. Paragraph 5 of the March 25, 2005 Agreement gives Daniele the right to use one or more different trademarks, so long as each bears no resemblance to "San Daniele," for the sale of prosciutto and ham.
b. Daniele is using five different trademarks, each bearing no resemblance to "San Daniele," for the sale of prosciutto and ham. The five (5) trademarks currently being used by Daniele, are **PRESIDENT'S RESERVE 400, GRAN PREMIO, PRESIDENT'S, DELI-CUT-O,** and **RESERVA** none of which are prohibited by the terms of the March 25, 2005 Agreement.
c. Daniele is complying with the March 25, 2005 Agreement.
d. The March 25, 2005 Agreement is in full force and effect.

IV. Defendant's Suggestions

1. That the parties file cross motions for summary judgment in relation to

defendant's counterclaim for declaratory relief pursuant to 28 USC §2201, prior to any discovery or mediation.

/s/ Girard R. Visconti, Esq.
Girard R. Visconti, Esq. (0566)

/s/ Jessica L. Papazian-Ross, Esq.
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CERTIFICATION

The undersigned hereby certifies that this document has been filed electronically on this 3rd day of May, 2007 and is available for viewing and downloading to the ECF registered counsel of record:

Via Electronic Service/ECF:
Matthew F. Medeiros, Esq.
mfm@lmkbw.com

CERTIFICATION

The undersigned hereby certifies that a true copy of the within document was forwarded on this 3rd day of May, 2007, via first class mail, postage pre-paid, to the following attorneys of record:

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